FILE COPY

SEP 10 19

No. 272

In the Supreme Court of the United States

OCTOBER TERM, 1932

NORWEGIAN NITROGEN PRODUCTS COMPANY,
PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	2
Argument	7
Conclusion	16
Appendix (Statutes involved and legislative history of provision as to hearings)	18–23

CITATIONS

Cases:

Auffmordt v. *Hedden*, 137 U. S. 310	14
Interstate Commerce Commission v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88	13
Origet v. *Hedden*, 155 U. S. 228	14
United States ex rel. Norwegian Nitrogen Products Company, Inc., v. *United States Tariff Commission*, 274 U. S. 106	3–4, 9, 15–16

Statutes:

Act of September 8, 1916, c. 463, Sec. 708, 39 Stat. 756, 798 (U. S. C., Title 19, Sec. 105)	21–22
Act of September 21, 1922, c. 356, 42 Stat. 858, 941–943—	
Sec. 315 (U. S. C., Title 19, Sec. 156 (e))	18–21
Sec. 501 (U. S. C., Title 19, Sec. 381)	13–14

Miscellaneous:

62 Cong. Rec., Parts 6, 11, 12	22–23

138568—32——1

In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 272

NORWEGIAN NITROGEN PRODUCTS COMPANY, petitioner

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the United States Customs Court (Judge Sullivan announcing the decision, Judge McClelland concurring, and Judge Brown dissenting) (R. 37–61) are reported as T. D. 44824, 59 Treas. Dec. 921. The opinion of the United States Court of Customs and Patent Appeals is reported as T. D. 45674.

JURISDICTION

The judgment of the Court of Customs and Patent Appeals was rendered May 2, 1932. (R. 213.)

Petition for certiorari was filed August 1, 1932. A certificate of importance had been filed by the Attorney General with the Court of Customs and Patent Appeals before the decision of that court. (R. 199.) The jurisdiction of this Court, which is not contested by the United States, is invoked under section 195 of the Judicial Code as amended by the Act of February 13, 1925. (U. S. C., Title 28, sec. 308.) The petitioner also refers to the 1931 Supplement of the Code, embodying section 647 of the Tariff Act of 1930, c. 497, 46 Stat. 590, 762. The United States submits that section 647 of the 1930 Act does not apply to the present controversy, which was pending when the section was enacted. Sec. 651 (c), 46 Stat. at 763, U. S. C., Sup. V, Title 19, sec. 1651 (c).

QUESTION PRESENTED

Whether the petitioner was entitled to inspect all of the data submitted to the Tariff Commission.

STATUTES INVOLVED

The pertinent provisions of the Act of September 21, 1922, and of the Act of September 8, 1916, are set forth in the Appendix.

STATEMENT

This controversy has been before the United States Tariff Commission and the courts for nine years. The petitioner represents in the United States a Norwegian company which is the only manufacturer of sodium nitrite in that country and

is the leading foreign exporter of that product to the United States. It challenges the validity of the investigation by the Tariff Commission, under the flexible-tariff provisions of the Tariff Act of 1922, which preceded the proclamation by President Coolidge increasing the duty on sodium nitrite from 3 cents per pound to 4½ cents per pound. In its petition and brief in the present case (pp. 4, 16, 17) the petitioner claims that the commission did not afford to the petitioner reasonable opportunity to produce evidence and to be heard. The record, however, shows clearly that, unless the company had a right to inspect data which had been submitted to the commission in confidence, it was given all reasonable opportunity which could be given by the commission to contest the requested increase in duty. The case, therefore, turns upon the question whether the company had a right to inspect such data.

In October, 1922, the American Nitrogen Products Company submitted to the Tariff Commission a request for a report and recommendation to the President that the duty on sodium nitrite be increased 50 per cent, setting forth that its plant was closed because it was unable to meet foreign competition. (R. 160–163, and repeated in R. 165–167.) The Commission on March 27, 1923, ordered an investigation and gave public notice of its order. (R. 68.) The next steps were as set forth in the opinion of this Court in *United States ex rel. Nor-*

wegian Nitrogen Products Company, Inc., v. *United States Tariff Commission*, 274 U. S. 106, 108, 109:

> Representatives of the Commission, in the course of its investigation, proceeded to Norway and Germany and sought from the Norwegian company and from German manufacturers data showing the cost of production of sodium nitrite in those countries. This was refused. The Commission's experts were permitted to examine the books and records of American manufacturers, obtaining information of the domestic cost of production and other relevant data. This information was given under promise that it would be treated as confidential and upon the assurance that the rules of the Commission and sec. 708 of the Revenue Act of September 8, 1916, c. 463, 39 Stat. 756, 798, so required. Section 708 prohibits the Commission from revealing "the trade secrets or processes" of which it might learn in the course of its investigations.
>
> After making its investigation, the Commission ordered a public hearing to be held on September 10, 1926 [1923]. * * *
> On September 15, 1923, the Commission made a preliminary report stating the results of its inquiry. The report contained a review of the data in the possession of the Commission, including an estimate of the cost of production in Norway, based upon such public sources in Norway as were available to it, both the Norwegian company and the plaintiff having refused to give any information on the subject.

These statements were based upon the record in that case at pp. 50 et seq. The public hearing on September 10, 1923, of which the commission gave notice on July 20, was held in order to enable interested parties to produce evidence and be heard. (Record in present case, 69.) Hearings were held down to and including October 6, 1923 (R. 82, 70, 146), and the interested parties were then given further time in which to file briefs (R. 158). The nature of the brief filed by the petitioner at that time is set forth on pages 55 and 56 of the record in the case against the Tariff Commission, cited above. As shown in the record in the present case, the American company which had applied for an increase in the rate of duty agreed to public disclosure of its costs of production if the Norwegian company would furnish the cost data for its product. This offer was not accepted. (R. 176.) The petitioner was given opportunity to offer evidence to the commission, to make oral argument, and to file briefs, but requests to cross-examine the commission's field examiners and to inspect the original and primary data gathered by them were refused. (R. 147–149, repeated R. 186–187.)

The Norwegian Nitrogen Products Company then petitioned the Supreme Court of the District of Columbia for a writ of mandamus directing the commission to disclose the information sought. This petition was dismissed on April 18, 1924, with a memorandum opinion which was printed in the record in that case. (1926 Term, No. 91, R. 78–87.)

An appeal was taken to the Court of Appeals of the District of Columbia. There was no order restraining further action by the commission and the Supreme Court of the District of Columbia had decided in its favor. While the appeal was pending the commission made a report to the President, and on May 6, 1924, he proclaimed an increase of duty. (R. 196.) The question of a further hearing before the Tariff Commission thus became moot, and the Court of Appeals so decided on April 6, 1925, 6 F. (2d) 491, but at the same time it declared that the petitioner had been entitled to learn from the commission all information received by it, however confidentially, which did not come within its definition of trade secrets. On error this Court remanded the case with directions to dismiss the petition as moot. (274 U. S. 106.)

It will be noted that the American company had stated that an increase in the rate of duty was necessary in order to enable it to compete successfully with foreign producers; that in March, 1923, the commission gave public notice that an investigation was being undertaken; that a careful study of available sources of information was made by the experts of the commission; and that the petitioner was given ample opportunity to present the facts concerning its own principal and did not take advantage of that opportunity. Justice to the American company required that the hearings should not be prolonged unnecessarily. It also required that the conclusions of the commission should be re-

ported to the President with all reasonable dispatch.

After the President had in May, 1924, proclaimed an increase in the duty on sodium nitrite, the petitioner made further importations of that commodity, and on February 24, 1925 (R. 7) and September 9, 1925 (R. 8), it filed protests against assessments of duty at the rate fixed by the President, claiming that the increase in duty by him was invalid, upon the ground that the Tariff Commission had not given to interested parties reasonable opportunity either to be present or to be heard (R. 10), and that the President had not made any independent investigation of the subject (R. 11). The Customs Court, one judge dissenting, overruled these protests. (R. 37–62.) This judgment was affirmed, without dissent, by the Court of Customs and Patent Appeals. (R. 200–214.)

ARGUMENT

The Tariff Act of 1922 established the following procedural requirement (Act of September 21, 1922, c. 356, sec. 315 (c), par. 2, 42 Stat. 858, 943, U. S. C., Title 19, sec. 156, par. 2):

> Investigations to assist the President in ascertaining differences in costs of production under this section shall be made by the United States Tariff Commission, and no proclamation shall be issued under this section until such investigation shall have been made. *The commission shall give reason-*

> *able public notice of its hearings and shall give reasonable opportunity to parties interested to be present, to produce evidence, and to be heard.* The commission is authorized to adopt such reasonable procedure, rules, and regulations as it may deem necessary. (Italics ours.)

An important limitation upon the power of the commission was established by the Act of September 8, 1916, c. 463, sec. 708, 39 Stat. 756, 798, U. S. C., Title 19, sec. 105, which provided:

> It shall be unlawful for any member of the United States Tariff Commission, or for any employee, agent, or clerk of said commission, or any other officer or employee of the United States, to divulge, or to make known in any manner whatever not provided for by law, to any person, the trade secrets or processes of any person, firm, copartnership, corporation, or association embraced in any examination or investigation conducted by said commission, or by order of said commission, or by order of any member thereof. * * *

But while the commission was forbidden to divulge "trade secrets or processes," it does not follow that it was obliged to divulge all of the information in its possession except "trade secrets or processes." Unless such obligation was otherwise imposed upon the commission it is not necessary to consider the precise meaning of those terms. The history of the adoption of the provision of the 1922 Act, quoted above, is set forth in an appendix to

this brief. It shows clearly that when the law was enacted Congress did not intend to require the commission to make public all of the evidence which was before it except that which it was forbidden by law to divulge. Such publicity was not required by the terms of the Tariff Act. Unless the rules of the Tariff Commission required it to disclose to interested parties the information received by it, or unless the hearing was comparable to a hearing before a judicial tribunal, the commission was not obliged to disclose such matters as it considered confidential.

The Tariff Commission had interpreted its own rules at the outset of this investigation. It had shown that information as to costs of production was a trade secret within the meaning of that term as used by the commission. The sworn answer of the members of the commission to a petition by the present petitioner for a writ of mandamus to require the commission to divulge information which the commission regarded as confidential declared:

> And respondents say that the information and access thus obtained by this Commission was furnished by said companies, including the American Nitrogen Products Company, upon the faith of said statute and upon the consequent understanding, recited in the forms and schedules of the Commission, that the costs of individual persons, firms, or corporations would be held strictly confidential and were for the exclusive use of the Commission and would be published only in such

manner as would not divulge the operations of individual manufacturers. (*United States of America ex rel. Norwegian Nitrogen Products Co.* v. *United States Tariff Commission,* 1926 Term, No. 91, R. 58.)

The commission may well have anticipated just such a situation as developed in this case, where the exclusive agent of a foreign manufacturing company, which refused to reveal its own costs, claimed that not merely the commission but this representative of the Norwegian manufacturer was entitled to obtain exact information respecting the costs of production and business secrets of American concerns. The commission very properly gave assurances to those from whom it secured confidential information that such information would not be given to their competitors.

The question, then, remains whether the hearing to which interested parties are entitled is comparable to a hearing before a judicial tribunal.

It is entirely clear upon the face of the statute that the functions of the Tariff Commission are in no sense judicial. Under Section 315 of the statute the President is authorized, upon investigation of the differences in costs of production of articles provided for in the dutiable list of the act wholly or in part the growth or product of the United States and of like or similar articles wholly or in part the growth or product of competing foreign countries, to ascertain said differences and determine and as-

certain any changes in classification or increases or decreases in rates of duty which are shown by the ascertained differences in cost of production to be necessary to equalize the same. The new rates of duty become effective after thirty days after proclamation.

It is provided in Section 315 (c) that the President, in so far as he finds it practicable, may take into consideration certain elements of advantage to the foreign competitor. It is then provided that investigations to assist the President in ascertaining differences in costs of production shall be made by the United States Tariff Commission, and that no proclamation changing the rates of duty shall be issued until such investigation shall have been made.

Thus it appears that the responsible and effective action under that section is that of the President. He is authorized to investigate and to ascertain the differences in cost of production. And the investigation by the Federal Tariff Commission is merely to aid the President in the performance of his functions, which are in no sense judicial. He may entirely disregard the investigation made by the Tariff Commission and base his conclusions upon information not considered by and not known to the Commission. The Commission determines nothing. It merely investigates differences in cost of production, and its investigation is designed solely to assist the President in ascertaining these

differences. The scheme of the statute has no resemblance to a judicial determination of facts affecting individual rights. It has no such effect, because no one has a right to question the duties to be imposed under the authority of the United States upon future importations. In such a statute the provision that interested parties shall be given a reasonable opportunity to produce evidence and to be heard can not be designed to change the fundamental character of the purely administrative investigation so that it shall take on the characteristics of a judicial hearing. And yet it appears that the petitioner's case stands solely upon the words "and to be heard" in Section 315 (c), and upon the petitioner's implication that the hearing accorded is necessarily judicial in character. We submit that the frame and purpose of the statute show that these words support no such implication, and are fully complied with if interested parties are afforded an opportunity to appear, present their evidence, and to make argument. To this extent the petitioner was afforded full opportunity to be present, to produce evidence, and to be heard.

The petitioner relies upon sections of the Interstate Commerce Act and decisions thereunder to define what is meant by a hearing; but those sections and decisions have no application here. The section of the Interstate Commerce Act directing the manner of conducting hearings before that commission is worded differently and has an en-

tirely different background. While the fixing of rates for service by carriers is legislative, nevertheless the fixing of rates affects property rights, and a rate so fixed may operate to confiscate property. The sections of the Interstate Commerce Act providing for hearings are framed on the theory that that commission should act judicially and conduct its hearings accordingly.

The decision in *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88, and other cases cited by the petitioner, dealt with hearings that were judicial or quasi judicial, construed statutes differently phrased and relating to different subjects, and dealt with cases where the action resulting from the hearing did affect rights of property which were entitled to judicial protection. Such authorities have no application to the case of changes in tariffs on imports, which affect no property rights in any legal sense, and with respect to the amount of which, at no stage, has an importer or manufacturer a right to a judicial hearing.

The same distinction is to be made between the present case and those relating to administrative hearings on exclusion and deportation of aliens, where rights of personal liberty, protected by the Fifth Amendment, are affected.

A similar contrast was afforded in the Tariff Act of 1922 itself. Section 501 (42 Stat. at 966, U. S. C., Title 19, sec. 381), which dealt with appeals by importers from the decision of the appraiser to the

Board of General Appraisers, provided that the General Appraiser who considered the appeal—

> shall give reasonable notice to the importer and to the person designated to represent the Government in such proceedings of the time and place of the hearing, at which the parties and their attorneys shall have an opportunity to introduce evidence and to hear and cross-examine the witnesses of the other party and to inspect all samples and all papers admitted or offered as evidence. * * *

But for this express provision the importer would have no right to cross-examine witnesses and inspect evidence. That was the rule under the Revised Statutes, which contained no such express provision. *Auffmordt* v. *Hedden,* 137 U. S. 310. In *Origet* v. *Hedden,* 155 U. S. 228, 238, the Court said that "if the importer is afforded such notice and hearing as enables him to give his views and make his contention in respect to the value of his goods, he cannot complain." The absence from section 315, relating to hearings before the Tariff Commission, and the presence in section 501, relating to hearings before the Board of General Appraisers, of express provisions allowing cross-examination of witnesses and inspection of all evidence produced, refutes the petitioner's contention.

The question being one of statutory construction and of the intent of Congress in the use of the words "to be heard," the considerations above mentioned

lead to the conclusion that in the Tariff Act of 1922 Congress did not use those words in the same sense that the word "hearing" is used in immigration cases, and did not intend that the hearings before the Tariff Commission should have all the features of judicial or quasi-judicial proceedings, but, on the contrary, should be similar to the customary hearings before legislative committees.

The petitioner claims that the decision of the Court of Customs and Patent Appeals is in conflict with the decision of the Court of Appeals of the District of Columbia in 1925. But there is no conflict of decision. There is simply a conflict between a definite decision in the present case and an elaborate dictum in the earlier case.

Its petition and brief (pp. 2, 10, 28) cite the opinion of this Court in *United States ex rel. Norwegian Nitrogen Products Co.* v. *United States Tariff Commission,* 274 U. S. 106, as authority for their proposition that the Court of Appeals of the District of Columbia had decided that case upon the merits; but the opinion of this Court does not support that statement. What this Court said was (p. 110):

> The Court of Appeals affirmed the judgment, holding that the case had become moot by the action of the President in fixing the new rate of duty. Notwithstanding this determina-

> tion, it reviewed the case at length and announced its conclusion on the merits. * * *
>
> We conclude that the case had become moot before the review below and that it is unnecessary for us to indulge in a discussion of the merits.

This Court knew, and the court of the District of Columbia knew when it announced its decision, that the case had become moot eleven months before the Court of Appeals of the District of Columbia rendered its opinion. It is true that the lower court discussed a question which it was powerless to decide in that case; but its expression of views did not constitute a decision.

There is now pending in the Supreme Court of the District of Columbia a case in which one business organization is seeking to secure from the Tariff Commission information which rival business organizations gave to the commission in confidence. The Supreme Court of the District of Columbia may feel constrained to follow the dictum announced by the Court of Appeals of the District of Columbia.

CONCLUSION

The question is one of general importance, but we believe it has been correctly decided in the Court of Customs and Patent Appeals. There is no existing conflict of decisions, but the dictum in the Court of Appeals of the District leaves the law uncertain in the courts of the District and a

conflict is quite likely to arise in pending litigation. While we do not believe this is a case which falls within the rules of practice of this Court in granting writs of certiorari, we are not disposed to oppose the granting of a writ if in the exercise of its discretion the Court deems the case worthy of review.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
CHARLES D. LAWRENCE,
Assistant Attorney General.
ROBERT P. REEDER,
RALPH FOLKS,
Attorneys.

SEPTEMBER, 1932.

APPENDIX

STATUTES INVOLVED

Section 315 of the Tariff Act of 1922, c. 356, 42 Stat., 858, 941–943, provided:

> (a) That in order to regulate the foreign commerce of the United States and to put into force and effect the policy of the Congress by this Act intended, whenever the President, upon investigation of the differences in costs of production of articles wholly or in part the growth or product of the United States and of like or similar articles wholly or in part the growth or product of competing foreign countries, shall find it thereby shown that the duties fixed in this Act do not equalize the said differences in costs of production in the United States and the principal competing country he shall, by such investigation, ascertain said differences and determine and proclaim the changes in classifications or increases or decreases in any rate of duty provided in this Act shown by said ascertained differences in such costs of production necessary to equalize the same. Thirty days after the date of such proclamation or proclamations such changes in classification shall take effect, and such increased or decreased duties shall be levied, collected, and paid on such articles when imported from any foreign country into the United States or into any of its possessions (except the Philippine Islands, the Virgin Islands, and the islands of Guam and Tutuila): *Provided,* That the total increase

or decrease of such rates of duty shall not exceed 50 per centum of the rates specified in Title I of this Act, or in any amendatory Act.

(b) That in order to regulate the foreign commerce of the United States and to put into force and effect the policy of the Congress by this Act intended, whenever the President, upon investigation of the differences in costs of production of articles provided for in Title I of this Act, wholly or in part the growth or product of the United States and of like or similar articles wholly or in part the growth or product of competing foreign countries, shall find it thereby shown that the duties prescribed in this Act do not equalize said differences, and shall further find it thereby shown that the said differences in costs of production in the United States and the principal competing country can not be equalized by proceeding under the provisions of subdivision (a) of this section, he shall make such findings public, together with a description of the articles to which they apply, in such detail as may be necessary for the guidance of appraising officers. In such cases and upon the proclamation by the President becoming effective the ad valorem duty or duty based in whole or in part upon the value of the imported article in the country of exportation shall thereafter be based upon the American selling price, as defined in subdivision (f) of section 402 of this Act, of any similar competitive article manufactured or produced in the United States embraced within the class or kind of imported articles upon which the President has made a proclamation under subdivision (b) of this section.

The ad valorem rate or rates of duty based upon such American selling price shall be

the rate found, upon said investigation by the President, to be shown by the said differences in costs of production necessary to equalize such differences, but no such rate shall be decreased more than 50 per centum of the rate specified in Title I of this Act upon such articles, nor shall any such rate be increased. Such rate or rates of duty shall become effective fifteen days after the date of the said proclamation of the President, whereupon the duties so estimated and provided shall be levied, collected, and paid on such articles when imported from any foreign country into the United States or into any of its possessions (except the Philippine Islands, the Virgin Islands, and the islands of Guam and Tutuila). If there is any imported article within the class or kind of articles, upon which the President has made public a finding, for which there is no similar competitive article manufactured or produced in the United States, the value of such imported article shall be determined under the provisions of paragraphs (1), (2), and (3) of subdivision (a) of section 402 of this Act.

(c) That in ascertaining the differences in costs of production, under the provisions of subdivisions (a) and (b) of this section, the President, in so far as he finds it practicable, shall take into consideration (1) the differences in conditions in production, including wages, costs of material, and other items in costs of production of such or similar articles in the United States and in competing foreign countries; (2) the differences in the wholesale selling prices of domestic and foreign articles in the principal markets of the United States; (3) advantages granted to a foreign producer by a foreign government, or by a person, partnership, corpora-

tion, or association in a foreign country; and (4) any other advantages or disadvantages in competition.

Investigations to assist the President in ascertaining differences in costs of production under this section shall be made by the United States Tariff Commission, and no proclamation shall be issued under this section until such investigation shall have been made. The commission shall give reasonable public notice of its hearings and shall give reasonable opportunity to parties interested to be present, to produce evidence, and to be heard. The commission is authorized to adopt such reasonable procedure, rules, and regulations as it may deem necessary.

The President, proceeding as hereinbefore provided for in proclaiming rates of duty, shall, when he determines that it is shown that the differences in costs of production have changed or no longer exist which led to such proclamation, accordingly as so shown, modify or terminate the same. Nothing in this section shall be construed to authorize a transfer of an article from the dutiable list to the free list or from the free list to the dutiable list, nor a change in form of duty. Whenever it is provided in any paragraph of Title I of this Act, that the duty or duties shall not exceed a specified ad valorem rate upon the articles provided for in such paragraph, no rate determined under the provision of this section upon such articles shall exceed the maximum ad valorem rate so specified.

* * * * *

The Act of September 8, 1916, c. 463, sec. 708, 39 Stat. 756, 798, U. S. C., Title 19, sec. 105, provided:

It shall be unlawful for any member of the United States Tariff Commission, or for any employee, agent, or clerk of said commis-

> sion, or any other officer or employee of the United States, to divulge, or to make known in any manner whatever not provided for by law, to any person, the trade secrets or processes of any person, firm, copartnership, corporation, or association embraced in any examination or investigation conducted by said commission, or by order of said commission, or by order of any member thereof. * * *

LEGISLATIVE HISTORY OF PROVISION AS TO HEARINGS

While several Senators had said that hearings would be necessary before new rates were established by the President (62 Cong. Rec., pt. 6, p. 5885; pt. 11, pp. 11155, 11156), the committee made no move toward placing such a provision in the bill until August 11, when it proposed (62 Cong. Rec., pt. 11, p. 11229) to insert in the Act the words:

> The commission is authorized to hold such hearings and to adopt such procedure, rules, and regulations as it deems necessary for adequate investigation under this section; and it shall give such opportunity as it deems necessary or proper for the presentation of material facts in each case and arguments thereon. The commission shall prepare its findings in the case of each proceeding under this section, and the President shall make such findings public as soon as practicable after the issuance of a proclamation under the provisions of this section.

In the Senate this provision was amended (62 Cong. Rec., pt. 11, pp. 11231, 11232) to read:

> The commission shall give reasonable public notice and shall give reasonable opportunity to parties interested to be present and to produce evidence and to be heard. Such

> hearings shall be public. Subject to the foregoing, the commission is authorized to adopt such reasonable procedure, rules, and regulations as it may deem necessary. The commission shall prepare its findings in the case of each proceeding under this section, and the President shall make such findings, hearings, and testimony public as soon as practicable after the issuance of a proclamation under the provisions of this section.

This provision was changed in conference (62 Cong. Rec., pt. 12, p. 12627) to read as it stood in the 1922 law. The entire paragraph as enacted was as follows:

> Investigations to assist the President in ascertaining differences in costs of production under this section shall be made by the United States Tariff Commission, and no proclamation shall be issued under this section until such investigation shall have been made. The commission shall give reasonable public notice of its hearings and shall give reasonable opportunity to parties interested to be present, to produce evidence, and to be heard. The commission is authorized to adopt such reasonable procedure, rules, and regulations as it may deem necessary.

The managers on the part of the House reported (62 Cong. Rec., pt. 12, p. 12660):

> The action of the conferees eliminates the provision of the Senate amendment that the Tariff Commission hearings shall be public and that the President shall make the findings, hearings, and testimony in all proceedings public as soon as practicable after the issuance of a proclamation.

U. S. GOVERNMENT PRINTING OFFICE: 1932